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No. 86-1071

IN THE

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

STATE OF ALASKA,
Petitioner,

v.

RICHARD E. LYNG, Secretary of Agriculture,
R. MAX PETERSON, Chief,
United States Forest Service, and
MICHAEL A. BARTON, Alaska Regional Forester,
and Their Respective Successors in Office,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPLY BRIEF

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March 20, 1987

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EDITOR'S NOTE

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1. Respondents assert that the Forest Service's interpretation of Section 6(a) is entitled to deference by this Court, because it is a longstanding and reasonable interpretation by the agency charged with the section's

implementation and was not challenged by Alaska for twenty years. (Resp. 2, 5). This argument is simply wrong.

At the outset, the Forest Service's interpretation is not as longstanding as Respondents contend. For instance, the 25 nautical mile "rule of thumb" for recreational selections is not an "interpretation that has been followed since enactment of the statute [1959] by the agency charged with administering the provision at issue." (Resp. 5, 9). This "rule of thumb" was never expressed orally or in writing until 1978 when the Forest Service disapproved the selections at issue. Indeed, this "rule of thumb" has never been formally included in the four sets of guidelines issued by the Forest Service since 1959 concerning Alaska's Section 6(a) selections.

Although the Respondents assert that the "State voiced no objection to the Forest Service's interpretation for almost twenty years, until late 1976," the fact is that the Forest Service's interpretation was not at issue until 1976 when Alaska undertook its first major land selection program under the Section 6(a) grant. (Resp. 2). Prior to that date, Alaska's Section 6(a) land selections were for small acreages to implement specific projects. It was not until 1976 that Alaska achieved sufficient planning expertise to undertake the painstaking analysis necessary to choose the only lands it would ever receive in its southern regions. Furthermore, as discussed above, some of the critical factors the Forest Service used to judge Alaska's selections were not even made

public prior to 1978, so no objection could have been raised. 1/

2. Respondents seek to find refuge in the plain meaning of the Act. But the alternative dictionary definitions proffered by the Respondents support Alaska's interpretation, for they confirm that the Act's only requirement is physical suitability for future use. 2/ Moreover, the

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1/ Likewise, Congress' two amendments of the Statehood Act did not ratify the Forest Service's position. (Resp. 9 n.10). Congress never addressed the Secretary of Agriculture's position on the types of land selections allowed under the Section 6(a) grant. The State of Alaska actively sought both amendments to the Statehood Act in order to better plan for and use its limited land grants. Therefore, the issues presented here were never considered during Congressional action on either amendment.

2/ Respondents attempt to draw significance from the fact that the term prospective is also defined to mean "in

Respondents incorrectly assert that Alaska's interpretation "does not [take into account] the fact that Section 6(a) is only one of several provisions granting federal land to the State." (Resp. 6-7). Alaska's interpretation recognizes, as it must, that the Section 6(a) land grant is limited to lands "suitable for prospective community and recreational areas." Alaska contends that the statute only requires a showing of physical suit-

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prospect" or "effective in the future." (Resp. 6. n.7) But this is simply to say that the term means pertaining to the future, and that is precisely how Alaska contends the statute should be construed. Similarly, the alternative definitions proffered for the term "suitable" ("having the necessary qualifications; meeting requirements") support Alaska's position that it need only demonstrate physical suitability for future use as a community or recreational area.

ability for those purposes, and not, as the Forest Service contends, a showing of "need" for the land or a formal "plan" to use the land for a particular purpose which satisfies a Regional Forester.

The purpose of the Section 6(a) land grant would, in fact, be frustrated by the "reasonable expectancy" requirement because, as the district court noted, there "is absolutely no indication in the record that the State is attempting to select land for other than community or recreational purposes." (Pet. App. B-30). Therefore, Alaska's satisfaction of the Section 6(a) requirements should not be judged under a Regional Forester's view of which lands will further Alaska's community development because, as the district court found,:

The land grant provisions in

> the Statehood Act serve a remedial purpose and therefore must not be construed strictly to defeat their purpose. See, e.g., Leo Sheep Co. v. United States, 440 U.S. 668, 682-83 (1979); Wyoming v. United States, 255 U.S. 489, 508 (1921); United States v. Denver and Rio Grande Ry. Co., 150 U.S. 1, 15 (1893). A strict interpretation of the Act and purpose clause, as proposed by the government, would act to defeat the land grant's purposes of creating an economic self-sufficient state, furthering economic expansion, and relieving the State from the federal government's stranglehold on Alaskan land.

(Pet. App. B-11 - B-12).

3. Moreover, there is no suggestion in the legislative history from the 85th Congress, which enacted the Alaska Statehood Act, that Alaska's right to conveyance of its full entitlement of 400,000 acres of national forest land is contingent upon establishing, to the satisfaction of the Forest Service, that the

land selected is needed for planned community development, as distinct from suitable for prospective use. Respondents support their position that the Section 6(a) grant is subject to the Forest Service's assessment of need by citing the Hearings On S.50 Before The Senate Committee On Interior And Insular Affairs, 83rd Cong., 2d Sess. 137-140 (1954). That testimony referred to a different bill (S.50, the 1953 proposed statehood bill, which Congress explicitly rejected in 1958 in favor of H.R. 7999), and occurred before a different Congress (83rd rather than 85th) four years prior to enactment of the Alaska Statehood Act. 3/

3/ The statements quoted were made by Governor Heintzleman, the Regional Forester in Alaska from 1937 until his

Furthermore, the Respondents quote from Senate Report No. 1028 (accompanying S.50 in the 83rd Congress) to describe the national forest grant as those lands "which will be needed for the expansion of those communities or the creation of new ones." (Resp. 7). In fact, that language was specifically deleted from the subsequent House Report which accompanied the version of the Statehood Act ultimately adopted, even though the House

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temporary appointment as Territorial Governor in 1953, and by Senator Anderson, formerly Secretary of Agriculture. Senator Anderson described Governor Heintzleman earlier in the proceedings as "not ... too enthusiastic about statehood." Hearings on S.50 before the Senate Committee on Interior and Insular Affairs, 83rd Cong., 2nd Sess. 8 (1954).

Report otherwise borrows liberally from the earlier Senate Report. House Report 624, 85th Cong., 1st Sess. (1957) reprinted in 1958 U.S. Code Cong. & Ad. News 2933.

In the 1958 legislative history, it is clear that Congress intended to reverse the pattern that had been established for Alaska as a territory, which allowed Alaska to develop solely "on the sufferance of ... Federal agencies." H.R. Rep. 624, reprinted in 1958 U.S. Code Cong. & Ad. News 2937-39. Instead, Alaska, as a state, was granted land under Section 6(a) to develop community and recreational areas. Therefore, it is particularly inappropriate to authorize a Regional Forester to impose his view of which lands accomplish the Section 6(a) purpose when the district court found

that Alaska's selections, in fact, fulfilled the grant's purpose. (Pet. App. B-10, B-30).

4. Finally, respondents repeatedly characterize the Ninth Circuit's decision as interlocutory in nature. The statutory interpretation issue presented is clearly ripe for review by this Court. The Ninth Circuit's decision has established the statutory interpretation of the Statehood Act which will be applied by the district court on remand for these specific disapproved sites and has set the standard for the remaining 550,000 acres to be selected. Therefore, it is entirely appropriate and necessary for this Court to address the questions of statutory interpretation raised by the Ninth Circuit's erroneous interpretation of the Alaska Statehood Act, particularly

because the dispute is between two sovereign entities. See United States v. General Motors Corp., 323 U.S. 373, 377 (1945).

CONCLUSION

For the foregoing reasons and the reasons stated in the Petition, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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